

VIA FACSIMILE AND U.S. MAIL

February 24, 2012

Jerry Bernhaut
Law Offices of Jack Silver
PO BOX 5469
Santa Rosa CA 95402-5469

Re: City of San José – Notice of Violations and Intent to File Suit under CWA

Dear Mr. Bernhaut:

This is in response to your letter dated February 17, 2012.

My office sent you a letter dated January 27 2012, in which we invited you to engage in discussions with us over concerns raised in your November 30, 2011 "Notice of Violations and Intent to File Suit Under the Clean Water Act" (NOI). Our letter stated in part:

"If you wish to obtain additional information concerning the activities and programs described in this letter, or have additional ideas for program improvement that you would like to share with the City of San José, we would be happy to set up a time for you to meet with City staff. We can also provide you with links to sources of information concerning future program activities. Please contact me at the number on the first page of this letter for any follow up you may have regarding this letter." (Emphasis added.)

Rather than accepting our offer to speak with you further about the NOI, your recent letter attaches a draft complaint seeking injunctive relief, declaratory relief, civil penalties, etc., arising out of alleged violations of the Clean Water Act (33 U.S.C. § 1251, *et seq.*), by the City. The letter falsely states that the City was unwilling to take a "collaborative approach" to discussing the issues raised in the NOI, while suggesting that your clients are willing to engage in discussions.

Jerry Bernhaut

Re: Notice of Violation and Intent to Sue Under the CWA

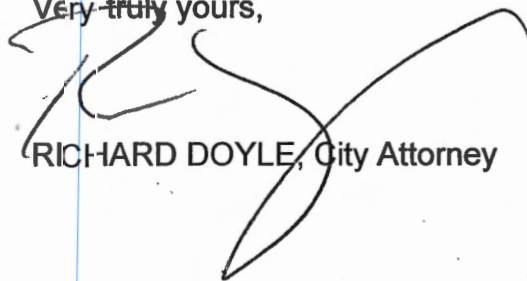
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Despite the seemingly contradictory positions taken by you thus far, the City is still amenable to discussing the NOI with you either in person or by phone. This approach may yield some solutions and avoid unnecessary lawyering.

You may contact Jennifer Pousho, Senior Deputy City Attorney, at (408) 535-1922, if you would like to schedule a time to meet with staff or to set up a conference call. Please note that if you choose to file the complaint, it will signal to the City that you are not interested in pursuing a dialogue with the City regarding the NOI.

Very truly yours,

A handwritten signature in black ink, appearing to be 'R. Doyle', written over the typed name.

RICHARD DOYLE, City Attorney

cc: Debra Figone, City Manager
Ed Shikada, Asst. City Manager
See Attachment A

ATTACHMENT A

Copies via regular mail to:

Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code 3213A
Washington, DC 20460

Regional Administrator
U.S. Environmental Protection Agency Region 9
75 Hawthorne Street
San Francisco, CA 94105

Executive Director
State Water Resources Control Board
P.O. BOX 100
Sacramento, CA 95812-100

Northern California River Watch
P.O. BOX 817
Sebastopol, CA 95472